

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

James R. Stork, Jr., #926228,)
) C/A No. 3:09-2153-MBS
Plaintiff,)
)
vs.)
)
James Metts, LCDC; Dr. Miles, CCS,) **ORDER**
)
Defendants.)
_____)

At the time of the underlying complaint, Plaintiff James R. Stork, Jr. was detained at the Lexington County Detention Center in Lexington, South Carolina. Plaintiff, proceeding pro se, alleges that he was denied adequate medical care in violation of his constitutional rights. Thus, the within action is brought pursuant to 42 U.S.C. § 1983.

Defendant James Metts filed a motion to dismiss on November 20, 2009. In accordance with Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), an order was issued advising Plaintiff of the dismissal procedures and the possible consequences if he failed to respond adequately. On December 4, 2009, the envelope containing Plaintiff's copy of the Roseboro order was returned to the Office of the Clerk of Court, marked "ATW - NOT HERE - RETURN TO SENDER - NOT DELIVERABLE AS ADDRESSED - UNABLE TO FORWARD."

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., the within action was referred to United States Magistrate Judge James R. McCrorey for pretrial handling. On December 10, 2009, the Magistrate Judge issued a Report and Recommendation in which he recommended that the complaint be dismissed, with prejudice, for failure to prosecute. See Fed. R. Civ. P. 41(b). The envelope containing Plaintiff's copy of the Report and Recommendation was returned to the Clerk

of Court on December 21, 2009, marked "ATW - RETURN TO SENDER - NOT DELIVERABLE AS ADDRESSED - UNABLE TO FORWARD."

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

Plaintiff was instructed by order filed September 17, 2009 to keep the Clerk of Court advised in writing if his address changed for any reason. Plaintiff was informed that his case could be dismissed for failing to comply with the September 17, 2009 order. Nevertheless, Plaintiff has provided the court with no change of address. It appears that Plaintiff no longer wishes to pursue this action. The court concurs in the Report and Recommendation and incorporates it herein by reference. The within action is dismissed with prejudice pursuant to Rule 41(b).

IT IS SO ORDERED.

/s/ Margaret B. Seymour

United States District Judge

Columbia, South Carolina

January 14, 2010.

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified that he has the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.